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10/623,812	07/22/2003	Peter Flohr	003-068	5286
36844 7590 03/26/2009 CERMAK KENEALY VAIDYA & NAKAJIMA LLP 515 E. BRADDOCK RD ALEXANDRIA, VA 22314				
EXAMINER GRAVINI, STEPHEN MICHAEL				
ART UNIT 3743		PAPER NUMBER		
NOTIFICATION DATE 03/26/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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CGOODIE@CKVNLaw.COM  
PTADMIN@CKVNLAW.COM

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte PETER FLOHR, EPHRAIM GUTMARK  
and CHRISTIAN OLIVER PASCHEREIT

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Application No. 10/623,812  
Technology Center 3743

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Mailed: March 26, 2009

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Before DELORES LOWE, *Review Team Paralegal*  
LOWE, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on March 18, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

APPEAL BRIEF, SUMMARY OF CLAIMED SUBJECT MATTER

Appellants filed an Appeal Brief dated May 16, 2007. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004.

According to 37 CFR § 41.37(c) (v), an Appeal Brief must include the following:

(v) *Summary Of Claimed Subject Matter.* A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which must refer to the specification by page and line number, and to the drawing, if any, by reference characters. < While reference to page and line number of the specification \*\*>requires< somewhat more detail than simply summarizing the invention, it is considered important to enable the Board to more quickly determine where the claimed subject matter is described in the application. >For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 CFR 41.37(c)(1)(vii), every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of claimed subject matter” appearing on pages 2 and 3 of the Appeal Brief filed May 16, 2007 is deficient because it does not separately map independent claims 1 and 7 to the specification. Correction is required.

MPEP § 1205.03 states in part:

(B) When the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice. Failure to timely respond to the Office's requirement will result in dismissal of the appeal. See MPEP § 1215.04 and § 711.02(b).

### CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner:

1) hold the Appeal Brief filed May 16, 2007 defective, as required by 37 CFR § 41.37(d);

2) notify the Appellants to submit a "paper" which corrects the Appeal Brief's Summary of Claimed Subject Matter under 37 CFR §41.37(c)(1)(v);

3) acknowledge and consider any "paper" submitted by Appellants to correct the Appeal Brief; and

4) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

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CERMAK KENEALY VAIDYA & NAKAJIMA LLP  
515 E. BRADDOCK RD  
ALEXANDRIA VA 22314